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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,297	07/09/2003	Gregg A. VanDusseldorp	A3-1635	1296

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EXAMINER

WEBB, SARAH K

ART UNIT PAPER NUMBER

3731

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

Office Action Summary	Application No. 10/604,297	Applicant(s) VANDUSSELDORP, GREGG A.	
	Examiner Sarah K. Webb	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-13 and 15-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,2,4-13 and 15-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1,2,4, and 7-10 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,183,482 to Bates et al., *as evidenced by US Patent No. 5,658,296.*

Bates discloses a device that includes a sheath (14), four legs (10) that define a basket in a deployed position, and actuating means (12). As shown in Figure 8E, the legs can have a cross-section shape that includes a concave surface and a convex surface. Bates describes the stowed position of the basket in the sheath and the deployment of the legs by the actuation handle without any assistance of a second component (column 4, lines 8-33). Bates describes many different functions of the device in lines 12-17 of column 4.

Figures 5A and 6A show the legs lying parallel to one another in the stowed position. The exterior surface of the legs in Figure 6A defines a "circular" shape. Replacing the flat inside surfaces of the legs in Figure 6A with the concave surfaces of Figure 8E (column 5, lines 42-45), a "circular" opening is defined between the legs in the stowed position. Giving the term "circular" the broadest reasonable interpretation, the substantially circular opening that is formed by the curved legs of Bates meets the claim limitations. The term does not necessarily require the shape to have a constant radius of curvature. Shapes that define a generally circular shape meet this broad limitation, so Bates is considered by the office to meet the claim requirements.

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Regarding claims 4 and 15: Bates explains that the basket can have a helical shape, as shown in Figure 2 of US Patent No. 5,658,296 (*which is incorporated by reference – see column 4, lines 45-50*).

Regarding claim 7: the legs have lateral surfaces defined by the intersection of the inner and outer surfaces. These "surfaces" are flat, oppose one another, and lie along a radial of an inner or outer surface.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 5,6,11-13, and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bates et al.

Bates fails to form the legs to have a constant radius of curvature and flat lateral edges. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to form the legs of the Bates device to have constant radii of curvature and flat lateral edges, because applicant has not disclosed that this shape provides an advantage or solves a stated problem. Bates does disclose that the legs can have flat lateral edges, as the legs illustrated in the embodiment of Figure 8B have flat lateral edges that lie along radii of curvature of the outer surface. The legs in Figure 8E simply join the inner and outer curved surfaces at a

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common point instead of truncating the curved surfaces at lateral edges, as in the embodiment of Figure 8B. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally well with the shape disclosed by Bates, because the legs of Bates perform similarly to applicant, in that they define a tubular shape while being stored parallel to one another and expand to define a basket that capture emboli. Applicant states that the lateral surfaces of the legs can be rounded (paragraph 17, line 16-19), which is evidence that other shapes of lateral edges would not inhibit the performance of the device.

Response to Arguments

3. Applicant's arguments, see pages 10-11, filed 10/13/06, with respect to the double patenting rejection have been fully considered and are persuasive. The double patenting rejection of claims 1,2, and 5-20 has been withdrawn.

4. Applicant's arguments filed 10/13/06 have been fully considered but they are not persuasive. Applicant argues that it would not be obvious to form the legs of Bates to have flat lateral surfaces or constant radii of curvature, because the Bates device is intended to cut into debris. Only certain embodiments are configured for cutting (Figures 8C & D), and other embodiments have smooth, atraumatic surfaces all around (Figure 8A). Therefore, this argument is not found to be persuasive. Further, applicant provides evidence that the flat lateral edges are not necessary by stating that the lateral surfaces of the legs can be rounded (paragraph 17, line 16-19). This is evidence that other shapes of lateral edges would not inhibit the performance of the device. Nonetheless, Bates does disclose that the legs can have flat lateral edges, as the legs

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illustrated in the embodiment of Figure 8B have flat lateral edges that lie along radii of curvature of the outer surface. The legs in Figure 8E simply join the inner and outer curved surfaces at a common point instead of truncating the curved surfaces at lateral edges, as in the embodiment of Figure 8B. Therefore, the claim requirements are found to be obvious modifications of the Bates device.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah K. Webb whose telephone number is (571) 272-4706. The examiner can normally be reached on Mon-Fri 8-4:30.

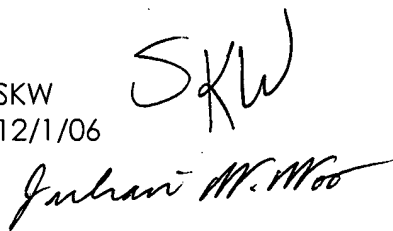
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SKW
12/1/06



JULIAN W. WOO
PRIMARY EXAMINER